IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

LA.App..No. 739 of 2006(D)

(L.A.R.NO.131/2002 ON THE FILE OF THE SUB COURT, CHERTHALA)

APPELLANT: 2ND RESPONDENT

THE PROJECT OFFICER, NO.III, OECF
PROJECT, K.W.A., VELLAYAMBALAM, TVPM., NOW KNOWN
AS THE PROJECT MANAGER, HAVING ADDRESS AT OFFICE
OF THE PROJECT MANAGER, K.W.A., JBIC ASSISTED
KERALA WATER SUPPLY PROJECT SRAVANAM, V-777/A,
CHERTHALA-688 524, ALAPPUZHA DISTRICT.

BY ADV. SRI.BABU VARGHESE, SC, KWA

RESPONDENTS: CLAIMANTS/STATE
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1. VELAYUDHAN PILLAI,
KADAVILPARAMBIL, PALLIPPURAM.
(NO MORE, REPRESENTED BY LRS. IE. RES. 2 TO 6)

2. VALSALA,
KADAVILPARAMBIL, PALLIPPURAM,
CHERTHALA, ALAPPUZHA DISTRICT.

3. PADMAJAKUMARI,
OF -DO- -DO-

4. SARADA,
OF -DO- -DO-

5. GEETHA,
OF -DO- -DO-

6. VENUGOPAL,
OF -DO- -DO-

7. KERALA STATE, REPRESENTED BY THE
SPECIAL TAHSILDAR (LA) GENERAL, ALAPPUZHA.

BY ADV. SRI.LIJU. M.P

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

L.A.A.No. 739 of 2006

Dated this the 22nd day of June, 2007

JUDGMENT

Kurian Joseph,J.

This is an appeal filed against the judgment and decree in L.A.R.No.131/2002 on the file of the Sub Court, Cherthala. The acquisition is for the purpose of OECF Aided Water Supply Scheme. The Section 4(1) notification is dated 10-12-1998. The relied on judgment is in L.A.R.No.132/2002. The learned Government Pleader submits that no appeal is filed by the State against the judgment in L.A.R.No.132/2002, since the opinion rendered and accepted is that there is no scope for appeal. The appellant herein, namely the requisitioning authority, had filed an appeal against L.A.R.No.132/2002 as L.A.A.No.578/2006. It is seen that the reference court relied on the judgment and decree in L.A.R.No.135/2002. The requisitioning authority had filed appeal against L.A.R.No.135/2002 as L.A.A.No.579/2006 and the State appeal is L.A.A.No.392/2004. In L.A.A.No.392/2004 the claimants had filed Cross Objection No.70/2005. The reference

court though found that the value of Ext.A1 property is Rs.39,107/- per Are, refused to grant the same rate to the acquired property on the ground that the extent of Ext.A1 was only 4.9 Ares, whereas the acquired property was larger extent, namely 33.18 acres. However, this court noted that there was no discussion available in the judgment as to the fixation of 1/4th of the value of Ext.A1 property to the acquired property. It was on that basis we remitted the matter to the court below and the parties have been directed to appear before the reference court on 4-6-2007. It is clear from the judgment itself that the cross objection alone is remitted and hence the cross objectors alone were found entitled to refund of court fee. Though it is not expressly stated that the appeals filed by the State and the requisitioning authority are dismissed, it is apparent that this court did not intend to interfere with the grant of 1/4th value of Ext.A1 property to the acquired property. In that view of the matter, there is nothing wrong in the common judgment dated 13-3-2007 in L.A.A.Nos.575, 578 and 581/2006. (L.A.R.No.578/2006 is against L.A.R.No.132/2002). The appeals

filed by the State against L.A.R.No.135/2002 as L.A.A.No.392/2004 and by the requisitioning authority as L.A.A.No.579/2006 have been disposed of interfering only with the grant of Section 23(1A) benefit. The said benefit was granted from the date of Section 4(1) notification to the date of award. However, the land was taken possession prior to the award, on 12-1-1999. The award was passed only on 22-7-2002. Since this aspect was not noted by this court in the judgment rendered originally on 13-3-2007, the matter was posted for further hearing for suo motu review and by order dated 22-6-2007 we have clarified that Section 23(1A) benefit will be available from the date of Section 4(1) notification till the date of taking possession, being the earlier date. The scope of the remand is only to examine the claim made by the cross objectors – claimants that there is no basis for limiting the enhancement to 1/4th of the value of Ext.A1 property. In other words, the enhancement upto 1/4th of the value of Ext.A1 property had been sustained.

2. Since the relied on judgment, that is,

L.A.R.No.132/2002, thus having become final as far as the fixation of land value, it is not necessary to consider this appeal on merits. It is also seen that the appellant has not remitted the balance court fee. It is not necessary to remit the balance court fee since the appeal is otherwise liable to be dismissed. Therefore, the appellant has acted wisely in not remitting the balance court fee since the appeal can be rejected for non-payment of balance court fee in which case the appellant will get refund of Rs.25,200/-. In case the appellant had remitted the entire court fee of Rs.75,600/-, since the appeal was liable to be dismissed on merits the appellant would have lost that amount also.

For all the above reasons this appeal is rejected. The court fee already remitted will be refunded to the appellant.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.